

DEC 08 2004

Henry Brendzel

TRANSMITTAL FORM (to be used for all correspondence after initial filing)		Complete if Known	
		Application Number	09/700,430
		Filing Date	4/19/2000
		First Named Inventor	David A. Kaplow
		Examiner Name	V. Paul Harper
		Group/Art Unit	2644
		Attorney Docket ID	Kaplow 1999-0098B
Total number of pages in this Submission: this page, plus		3	

ENCLOSURES (check all that apply)

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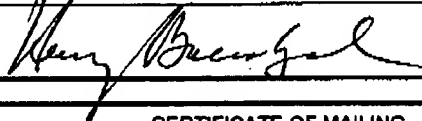
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Kapilow 1999-0096B

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PATENT AND TRADEMARK OFFICE**Patent Application**

Inventor(s)	David A. Kapilow	Case Name	Kapilow 1999-0096B
Filing Date	4/19/2000	Serial No.	09/700,430
Examiner	V. Paul Harper	Group Art Unit	2644
Title	Method and Apparatus for Performing Packet Loss or Frame Erasure Concealment		

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SIR:

AMENDMENT

REMARKS

This is in response to an Office action dated September 20, 2004.

Claim 1 is provisionally rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over claims 1 and 12 of copending application No. 09/700,524. Applicant respectfully traverses.

First, a provisional rejection may be applied based on an earlier filed, copending, unpublished application. MPEP 706.02(f)(2). Since the '524 copending application was filed on the same day as the instant application, it is not an earlier filed application and, therefore, it is not subject to a provisional rejection in view of the '524 application.

Additionally, it is respectfully submitted that the rejection is at least premature. Even without addressing the merits of the Examiner's assertion as to obviousness:

- (a) it is not known whether any claims in the '524 application will issue,
- (b) it is not known what the issued claims will define,
- (c) consequently it is not known whether the Examiner will even wish to assert obviousness, or is asserted, whether the Examiner is correct in such an assertion, and